IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1688 OF 2006

Santosh Amirchand Gupta,)
Saidham Sahakari Griha Nirman)
Sanstha, D-4, Plot No.49,)
Near Gita Vikas Mandi,)
Shivaji Nagar, Govandi,)
Mumbai-400 043.) ...PETITIONER.

Versus

1. The State of Maharashtra)
through the Hon'ble Minister)
for Food, Civil Supplies,)
Mantralaya, Mumbai-400032.)

2. The Deputy Controller of)
Rationing, "E"Region,)
Wadala, Mumbai.)

3. Dattatraya Kamaji Survase,)
Sainath Kirana Store,)
Shop No.176/1, Rafiqnagar,)
Govandi, Mumbai-400043.) ...RESPONDENTS.

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Mr.S.P.Kanuga i/b. Ms.A.G.Bhaktwani, Advocate for the Petitioner.
Mr.P.G.Sawant, A.G.P., for Respondent Nos.1 & 2.
Mr.K.K.Jadhav, Advocate for Respondent No.3.

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CORAM : **F.I.REBELLO AND**
SMT.V.K.TAHILRAMANI,JJ.

DATE OF RESERVING
THE ORDER : JULY 07, 2006.

DATE OF PRONOUNCING
THE ORDER : JULY 12, 2006.

ORAL JUDGMENT: (PER SMT.V.K.TAHILRAMANI,J.)

1. The petitioner has brought in question the order dated 19.5.2006 passed by the Hon'ble Minister for Food and Civil Supplies, Government of Maharashtra in a Revision Application filed under Rule 20 of the Maharashtra Foodgrains Rationing (Second) Order, 1966.

2. The Deputy Controller of Rationing, "E" Division, Wadala, Mumbai by his order dated 12.1.2006 cancelled the licence of Respondent No.3 in respect of authorised ration shop No.44E 106 and the said order came to be modified by the impugned order.

3. The Respondent No.3 was allotted ration shop under Item No.169/95 for Govandi Area. On 16.12.2005, Respondent No.3 had applied for change of address of the said shop; and on making enquiries the change of address was approved by order dated 31.12.2005. In the meanwhile, the

present petitioner had submitted an application to Respondent No.2 i.e. Deputy Controller of Rationing on 23.12.2005 requesting to transfer the said shop of Respondent No.3 in his name on the basis of Power of Attorney and sale purchase agreement. On receipt of this application, Respondent No.2 issued a show cause notice to Respondent No.3 on 5.1.2006 and after hearing Respondent No.3 and taking into consideration his request application dated 9.1.2006, Respondent No.2 cancelled the licence of Respondent No.3 by order dated 12.1.2006 holding that Respondent No.3 had illegally transferred the licence to the petitioner. The Respondent No.2 further held that, the Respondent No.3 could not produce the original licence as the same was not with him and it was a matter of serious nature and hence it was not proper to continue the authorised shop. By exercising powers under Rule 3(d) of the Maharashtra Foodgrains Rationing (Second) Order, 1966, Respondent No.2 forfeited the deposited amount of the authorised shop and also cancelled

the licence of the said shop with immediate effect.

4. We have heard learned Counsel for the Petitioner and Respondents and perused the affidavit filed by the Respondent No.3. At the threshold, we must note that the authorisation/licence, issued to run a fair price shop so as to distribute the essential commodities to the ration card holders, is not transferable. Such licences are issued by inviting applications after proclamations are published in the newspapers and by following the guide-lines. The Respondent No.3 was granted such a licence in the year, 1995 and he was running the same for ten years without any complaints against him. His application dated 16.12.2005 for change of address was allowed by Respondent No.2 vide his order dated 31.12.2005 after due enquiry. On 23.12.2005 the petitioner approached Respondent No.2 for transfer of the shop in his name on the basis of power of attorney and sale purchase agreement.

The revisional authority on perusal of the record has noted that the Respondent No.3 had requested the petitioner to run the shop for a short period as the licencer was required to attend his family problems and the alleged transfer by sale was doubtful. If the same transaction was for Rs.10 lakhs there was no registration of the agreement and the agreement itself was not free from doubt. In any case the licence was not transferable and hence even if the sale transaction was genuine, the licence could not have been transferred. The Respondent No.3 had run the shop successfully for about ten years and by taking into consideration his family difficulties the Hon'ble Minister rightly modified the order passed by Respondent No.2 and consequently the said Respondent No.3 has been running the shop from 26.5.2006 onwards. Moreover, it is to be noted that though Respondent No.2 by order dated 12.1.2006 cancelled the licence to run authorised shop, the petitioner had not challenged the said order and it was Respondent No.3 who had challenged the said order.

5. In the premises, we do not see any merit in the challenge by the petitioner to the order passed by Respondent no.1 i.e. the revisional authority, and hence the Petition fails. Accordingly, the Petition is hereby rejected. No order as to costs.

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]